Supreme Court, U. S.
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In the
Supreme Court of the United States

OCTOBER TERM, 1978

NO. 78-1662

CHEVRON U.S.A. INC., ET AL.,
Petitioners

Versus

CECIL D. ANDRUS, SECRETARY, DEPARTMENT OF THE INTERIOR, ET AL.,
Respondents

REPLY BRIEF TO OPPOSITION BY RESPONDENTS

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Respondent Interior officials state that the question presented is whether the Secretary of the Interior can review and reverse discretionary decisions made by his subordinates. That question is not presented. Chevron has conceded that he can. The issue presented, which is of vital importance to administrative law and should not be obscured, is whether an agency head who has delegated his discretionary authority to a subordinate and has provided for review within the agency of decisions of the subordinate can sidestep the subordinate, make the delegated decision himself, and foreclose agency review. *Accardi v. Shaughnessy*, 347 U.S. 260, 98 L. Ed. 681 (1954) holds that under such regulations the agency head, though he retains the power of review, divests himself of the authority to make the initial decision and must permit the subordinate to make it. *Accardi* precludes an agency head from circumventing the effect of regulations designed to insure fairness and care in decision-making.

The regulation at 43 C.F.R. § 4.5 cited by Interior and

quoted in the margin[1] was certainly not intended to preserve to the Secretary the authority to make an initial decision vested in a subordinate. Rather the regulation was intended to make clear that the Secretary could continue personally to exercise the review function vested in the Office of Hearings and Appeals. Otherwise the regulation would hardly have stated that "the same authority . . . may be exercised by the Director [of the Office of Hearings and Appeals]."

Respectfully submitted,

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1. 43 C.F.R. § 4.5 (1977) provided:

Nothing in this part shall be construed to deprive the Secretary of any power conferred upon him by law. The Secretary reserves under his supervisory powers the right to take original jurisdiction of any case and render the final decision in the matter, after holding such hearing as may be required by law. The same authority, except with respect to the conduct of hearings pursuant to 5 U.S.C. Sec. 554, may be exercised by the Director pursuant to his delegated supervisory authority from the Secretary.